

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), and (e)
for
Wednesday, August 10, 2011
10:00 a.m.
Sacramento, California
&
West Covina, California

TO: Members of the California Occupational Safety and Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: June 28, 2011

RE: Closed Session of the Board to be held on August 10, 2011

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), and (e) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1. A-1 BEST FOOD, INC., 10-R6D2-1972 THROUGH 1976
2. BINDER TECH, 10-R4D1-2286 AND 2287
3. CB HARVESTING LLC, 10-R3D2-1951 AND 1952
4. GUARDSMARK, 10-R3D1-2675
5. MISSION MILLWORKS, 10-R4D2-3786 THROUGH 3788

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

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1. 5258 BODY, INC. DBA KJ'S COACHCRAFT AUTO BODY, 11-R6D5-0755
2. AAE LAX, INC., 10-R3D6-3334
3. ABM JANITORIAL, 10-R1D1-4100 AND 4101
4. IBRAHIM ABUYAHYA/KARIM ALLEN DBA HARRIS BROTHERS,
10-R6D7-4003
5. ARTEK AUTOWORKS, INC. DBA LA AUTO BODY, 11-R6D5-0927
6. AV PALLET COMPANY, 10-R4D3-3081 THROUGH 3084
7. AZTECA, INC. DBA PARIS BAR & GRILL, 11-R6D5-0928 AND 0929
8. B. L. PRICE CO., INC., 10-R4D3-3652
9. BAKERSFIELD COLD & DRY STORAGE LLC, 11-R4D3-0859
10. DEBORAH BERNSTEIN, 11-R6D5-0717
11. BJs RENTALS, INC., 11-R3D2-0960
12. BOB WETZEL CONCRETE, INC., 11-R3D1-1085 AND 1086
13. BROWN MOTOR WORKS LLC, 10-R4D3-3881 THROUGH 3883
14. C & L DISMANTLER, INC. DBA ACTION MINI TRUCK DISMANTLING,
11-R3D6-0389
15. CAL ORCHARD FARMING & RECEIVING COMPANY LLC, 10-R2D1-0342
AND 0343
16. CDA, INC., 10-R4D3-3654 AND 3655
17. CENTRAL CALIFORNIA ALMOND GROWERS ASSOCIATION, 10-R2D5-0273
AND 0274
18. CHRIS NGOUN CHUNG DBA QUICK STOP SUBS, 11-R6D5-0753 AND 0754
19. CHURCH & LARSEN, INC., 10-R4D1-2724
20. CITY OF MANTECA – WASTE WATER QUALITY CONTROL FACILITY,
09-R2D4-3519
21. COLORADO STRUCTURES, 11-R3D6-0191

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22. CORPORATE PALLETS SERVICE, INC., 10-R4D2-3735
23. DEPARTMENT OF CORRECTION – CAL FIRE, 11-R3D3-0962
24. EDCO WASTE & RECYCLING SERVICES, 10-R3D2-3855
25. ESPARZA ENTERPRISES, INC., 10-R2D5-2224
26. ESPARZA ENTERPRISES, INC., 10-R2D5-2225
27. ALLEN ETCHEPARE, JEANMARIE ETCHPARE ET AL DBA EMERALD FARMS, 11-R2D1-1147 THROUGH 1150
28. FABRIC WALLCRAFT OF CALIFORNIA, INC., 11-R3D1-0806
29. FAMILY RANCH, INC., 11-R2D5-0735
30. BRUNO FERAZZA & DAVID FERAZZA DBA BRUNO FERAZZA TREE SERVICE, 09-R2D1-2642 THROUGH 2644
31. FERGUSON FIRE & FABRICATION, INC. DBA LINCOLN PRODUCTS, 10-R3D6-3247 AND 3248
32. FRITO-LAY, INC., 09-R1D5-2641
33. GOODWILL INDUSTRIES OF SANTA CLARA COUNTY, 10-R6D1-4120
34. GREENWICH INTERNATIONAL DBA MELROSE CREATIONS, INC., 11-R3D6-0321 THROUGH 0324
35. H. GRANADOS COMMUNICATIONS, INC. DBA HG COMMUNICATION, 10-R3D6-3331 THROUGH 3333
36. H. NARAGHI FARMS, INC., 10-R2D4-1729
37. PETER HAYWOOD DBA LOS CHAMISAL VINEYARDS, 10-R6D1-0981
38. INCA PALLETS SUPPLY, INC., 10-R4D2-3733 AND 3734
39. JAI AMBE ENTERPRISES, INC. DBA PRESIDENTIAL CARWASH, 10-R6D5-3052 AND 3053
40. JULIET'S AUTO BODY, INC., 11-R6D5-0637 AND 0638
41. LEONID KAMENETSKY, 10-R4D3-3653

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42. KINGSPAN INSULATED PANELS, 10-R2D4-2622 AND 2623
43. KINGSPAN INSULATED PANELS, 10-R2D4-2713 AND 2715
44. LIBERTY PALLETS, INC., 10-R4D2-3731 AND 3732
45. LOMPOC STONE & QUARRY, 10-R5D2-3789 THROUGH 3790
46. LUXFER, INC. DBA SUPERFORM USA, 11-R6D2-0917 THROUGH 0922
47. M. F. MAHER, INC., 10-R1D2-0064 AND 0065
48. MARRONE BIO INNOVATIONS, 10-R2D1-3352
49. MARTIN'S METAL FABRICATION AND WELDING, INC., 08-R2D2-4890 AND 4891
50. MC LEAN DOOR AND TRIM, INC., 10-R3D2-3481 AND 3482
51. MID VALLEY RECYCLING, 09-R2D4-3612 AND 3613
52. MORRISON SENIOR LIVING, 10-R1D2-1536 AND 1537
53. MOUNTAIN POWER CONSTR. CO., 08-R2D3-3005
54. NORCAL PLASTERING, 08-R2D1-4540
55. PORTS AMERICA, 09-R6D2-4308
56. PORTS AMERICA, 10-R6D2-4042 THROUGH 4046
57. PRUETT TRANSPORTATION, 09-R2D4-2133
58. REDDING CITY PUBLIC WORKS, 10-R2D3-2443
59. REITER BERRY FARMS, 11-R4D3-0330
60. RUTILIOS GENERAL CONTRACTOR, 11-R3D6-0361 AND 0362
61. SHANK/BALFOUR BEATTY, 09-R5D1-2033 AND 2034
62. SHOKER TRADING CORPORATION, 11-R3D6-0266 AND 0267
63. SINE QUA NON, INC., 11-R6D2-1276
64. SOIL MIXING SERVICES, INC., 11-R5D2-0211 THROUGH 0213

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65. SULLY-MILLER CONTRACTING CO., 10-R3D6-3220
66. TABER COMPANY, INC., 10-R3D1-2444 THROUGH 2448
67. TUTOR-SALIB CORP., 10-R2D3-3927
68. UC LOS ANGELES FACILITIES MANAGEMENT, 10-R4D1-0559
69. VALLEY PRECISION METAL PRODUCTS, INC., 10-R4D3-3256
70. GERARDO VASQUEZ DBA NON STOP BODY SHOP, 11-R6D5-0794 AND 0795
71. CHARLES M. VOGEL DBA CM VOGEL ELECTRIC, 11-R3D3-0809 THROUGH 0811
72. WALMART STORE 3248, 10-R3D1-2192 AND 2193
73. WESTECH INDUSTRIES, INC., 10-R2D3-2592
74. WIRZ & CO. PRINTING, INC., 11-R3D3-0743 THROUGH 0745
75. ROBERT C. WORTH, INC., 11-R4D3-0110
76. ZACKY FARMS LLC, 08-R2D5-3285 AND 3286
77. ZACKY FARMS LLC, 10-R2D4-2618 THROUGH 2620

ORDERS DISMISSING APPEALS:

1. COTATI ROHNERT PARK UNIFIED SCHOOL DISTRICT DBA RANCHO COTATI HIGH SCHOOL, 10-R1D5-1029
2. HYDROSCIENCE OPERATIONS, INC., 10-R1D2-0389
3. GINO LUIS ROSS, 10-R4D2-1443 AND 1444

ORDER UPON SECOND REMAND:

1. MITCHELL ENVIRONMENTAL CONCRETE, 09-R4D3-0147

PETITIONS FOR RECONSIDERATION:

1. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 10-R6D2-0188 THROUGH 0191

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2. PRODIGY ELECTRIC, INC., 11-R4D3-0898 AND 0899
3. SHIHO SEKI DBA MAGICAL ADVENTURE BALLOON RIDES, 11-R3D3-0477
4. UNITED PIZZA, INC. DBA PAPA JOHN'S PIZZA STORE #1899,
09-R2D1-3295 AND 3296

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

1. PACIFIC TELEPHONE COMPANY DBA AT&T, 06-R2D4-5052 AND 5053

DECISIONS AFTER RECONSIDERATION (DRAFTS):

(If the Appeals Board grants a petition for reconsideration it reviews the facts of the appeal and then issues a decision after reconsideration upholding, reversing or modifying the underlying ALJ decision.)

1. A & C PALLETS, 10-R6D5-1687 AND 1688
2. AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138
3. AC TRANSIT, 08-R1D4-0135
4. AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
5. AGWOOD MILL & LUMBER, INC., 08-R1D5-1068
6. VERNON MELVIN ANTONSEN & COLLEEN K. ANTONSEN, INDIVIDUALLY
DBA ANTONSEN CONSTRUCTION, 06-R2D3-1272
7. ANNING-JOHNSON COMPANY, 06-R1D3-1976
8. BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221
9. BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
10. BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO.,
09-R6D2-2239 THROUGH 2241
11. BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
12. BURRTEC WASTE INDUSTRIES, INC., 10-R3D3-9222
13. BURTON L. SILVA FARMS, 09-R1D2-1498
14. C & M FINE PACK, INC. 07-R6D2-4149 THROUGH 4155

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15. C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
16. CA CORRECTIONS, 08-R2D5-0975 THROUGH 0978
17. CA RASMUSSEN, INC., 08-R4D5-219 AND 220
18. CALIFORNIA INTERSTATE EXPRESS, 09-R4D2-3460
19. SILVIA CASTRO, MIGUEL CASTRO DBA SILVIA CASTRO FLC,
09-R2D4-1900
20. CITY OF FOSTER CITY, DEPT. OF PUBLIC WORKS, 09-R1D3-4195
21. CJI PROCESS SYSTEMS, 09-R6D2-1333 THROUGH 1336
22. CLINE CELLARS, INC., 08-R1D5-2946
23. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR
08-R6D5-3466 AND 3467
24. COMMERCIAL METAL FORMING, 09-R3D1-1592
25. CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
26. CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
27. CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
28. DAKOTA COMPANIES UNLIMITED, 05-R4D3-392 AND 393
29. DESIGN BUILDERS, INC., 08-R4D4-1901
30. JOAQUIN DUARTE DBA PROFESSIONAL TREE SERVICE, 09-R3D3-1111
31. DUKE PACIFIC, INC., 06-R3D3-5175 THROUGH 5177
32. DUKE PACIFIC, INC., 08-R3D3-574
33. DUININCK BROS., INC., 06-R4D3-2871
34. EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332
35. ESTENSON LOGISTICS LLC 05-R1D4-1755 AND 1756
36. EZ MIX, INC., 08-R4D3-1898

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- 37. FORTUNA IRON WORKS 06-R2D3-4222
- 38. G.T. ALDERMAN, INC., 05-R4D3-3513
- 39. GENERAL TRUSS CO. INC., 06-R2D1-783 AND 784
- 40. HB PARKCO, 07-R4D2-1730 AND 1731
- 41. THE HERRICK CORP., 07-R3D1-495
- 42. INDUSTRIAL MASONRY, INC., 07-R3D2-735 AND 736
- 43. INTERNATIONAL ALUMINUM CORPORATION, 09-R6D2-1185
- 44. IRWIN INDUSTRIES, INC., 08-R6D4-1454 THROUGH 1456
- 45. JENSEN PRECAST, 05-R2D1-2377
- 46. JOHN M. FRANK CONSTRUCTION, 06-R4D3-968
- 47. KELSO'S AUTO DISMANTLING AND AUTO SALES, 10-R2D4-0165
- 48. KINDER MORGAN ENERGY PARTNERS, LP., 05-R5D1-2013 AND 2014
- 49. L & S CONSTRUCTION, 10-R3D2-1822
- 50. LA MINA CANTINA, 09-R2D5-0039
- 51. LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
- 52. LAST CHANCE, INC. DBA A STAR RECYCLING, 10-R4D3-3468 AND 3469
- 53. LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
- 54. LION RAISINS, INC., 08-R2D5-2253 AND 2254
- 55. L N I CUSTOM MANUFACTURING, 10-R6D2-9154
- 56. LOS ANGELES, CITY OF, HOUSING AUTHORITY, (HACLA), 05-R4D2-2541
- 57. LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540
- 58. MARINE TERMINALS, 08-08-R6D2-1920
- 59. MCM CONSTRUCTION, INC., 10-R4D3-2498 THROUGH 2500

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60. MICHELS CORP. DBA MICHELS PIPELINE CONSTRUCTION, 07-R5D1-4274
61. MILLENMUM GENERATION, INC., 08-R4D3-5047
62. MOOREFIELD CONSTRUCTION, INC., 10-R3D5-9207
63. MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
64. NEWMAN FLANGE & FITTING COMPANY, 07-R2D4-2581 THROUGH 2583
65. NIBBI BROTHERS ASSOCIATES, INC., 07-R1D1-2494
66. PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
67. PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC., 08-R2D1-0025 AND 0026
68. POUK & STEINLE, INC., 09-R3D3-0491
69. R & L BROSAMER, INC., 03-R1D5-4832
70. RAMON ARANDA dba I & R PALLETS, 10-R6D5-9053
71. RIEZEBOS CONSTRUCTION, INC., 08-R2D5-1730
72. JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
73. SAN FRANCISCO FIRE DEPARTMENT, 09-R1D1-0655
74. SANTA ROSA CITY TRANSIT AND PARKING DEPARTMENT, 05-R1D5-1417
75. SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
76. SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
77. SMUD, 08-R2D1-4887 THROUGH 4889
78. MARTIN J. SOLIS, DBA SOLIS FARM LABOR, 08-R2D1-3415
79. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414 THROUGH 3418
80. SONORA REGIONAL MEDICAL CENTER, 10-R2D4-0162
81. STAFFCHEX, 10-R4D3-2456 THROUGH 2458

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82. SUNOPTA FRUIT GROUP, 09-R3D1-9245
83. SUNRISE GROWERES FROZ SUN FOODS, 09-R4D3-2850
84. A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
85. TEICHERT & SON, INC., A CORPORATION DBA TEICHERT AGGREGATES, 04-R5D2-850 AND 851
86. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 05-R2D4-2650 AND 2651
87. UNITED PARCEL SERVICE, 07-R3D3-3322
88. WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095
89. WINCHESTER CONSTRUCTION, 08-R4D3-4709 AND 4710
90. WINDSOR CHICO CREEK CARE AND REHABILITATION CENTER LLC, 10-R2D1-0263

LEGISLATION

(Review and discuss current legislation which may affect the Appeals Board)

1. SENATE BILL 829

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. JERLANE, 37-2007-00056381-CU-WM-NC (01-4344/4345)
2. JERLANE, 37-2009-00059323-CU-WM-NC (08-1733)
3. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB), 34-2007-00882192-CU-WM-GDS, (01-3261)
4. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB) (00-440)
5. SHIMMICK CONSTRUCTION CO., 34-2008-80000121-CU-WM-GDS (06-1136)

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6. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
7. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
8. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
9. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430
(09- 9280/9281)
10. FRESNO PRODUCE, CO., INC., 10CECG02394 (10-R6D1-9064)
11. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047
(07-R5D1-3611)
12. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-
80000640 (08-R2D1-0027 THROUGH 0030)
13. EMERSON RUSSELL MAINTENANCE CO., RG-10543219 (08-R1D4-4167)
14. SMUD, 34-2010-80000723 (08-R2D1-4887)
15. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
16. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)

COURT OF APPEAL

1. HARRIS CONSTRUCTION COMPANY, INC., C065265 (07CS00518) (05-3914)
2. HARRIS CONSTRUCTION COMPANY, INC., C065265 (07CS00518) (05-3914)

LEGAL UNIT PROCEDURES:

1. PROCESSING STIPULATIONS

PERSONNEL:

(Issues regarding staff)

Any matter not completed at this Closed Session may be continued to subsequent meetings.